

AMENDATORY SECTION(Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-051 Special provision -- Individual providers (~~((under))~~) of home care (~~((quality authority))~~) under RCW 74.39A.270 and 74.39A.300 -- Family child care providers under RCW 41.56.208 -- Adult family home providers under RCW 41.56.029. (1) This rule consolidates special rules applicable to:

(a) Individual providers under (~~((chapter 3, Laws of 2002, Initiative Measure No. 775 (I-775) passed by Washington voters in November of 2001. I-775 extended))~~) RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

((~~((1))~~)) (b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the Medicaid and state-funded long-term care programs.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by (~~((I-775))~~) RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

((~~((2))~~)) (3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by (~~((I-775))~~) RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((3))~~ (4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

~~(5)~~ The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

~~(a)~~ Individual providers under ~~((1-775))~~ RCW 74.39A.270 and 74.39A.300; or

~~(b)~~ Family child care providers under RCW 41.56.028; or

~~(c)~~ Adult family home providers under RCW 41.56.029.

~~((4))~~ (6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

~~(a)~~ Individual providers under ~~((1-775))~~ RCW 74.39A.270 and 74.39A.300; or

~~(b)~~ Family child care providers under RCW 41.56.028; or

~~(c)~~ Adult family home providers under RCW 41.56.029.

~~((5))~~ (7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((6))~~ (8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((7))~~ (9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((8))~~ (10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((9))~~ (11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((10))~~ (12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((11))~~ (13) Any representation election for the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to ~~((individual))~~ providers may describe the collective bargaining rights established by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to ~~((individual))~~ providers shall be set forth in English ~~((and Spanish))~~ and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to ~~((individual))~~ providers shall include a card return-addressed to the commission, by which ~~((individual))~~ providers eligible voters can individually request notice and ballot materials in ~~((Cambodian, Korean, Mandarin, Russian, Tagalog, Ukrainian, or Vietnamese))~~ languages other than those received. Upon receipt of such a request ~~((from an individual provider))~~ card, the agency shall promptly supply notice and ballot materials to the ~~((individual provider))~~ eligible voter in the requested language.

(d) At least ~~((twenty-four))~~ twenty-one days shall be provided between the date on which ballot materials are mailed to ~~((individual))~~ providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in ~~((WAC 391-25-470 to))~~ WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection ~~((2))~~ (3) of this section.

~~((12))~~ (14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 74.39A.240 and [74.39A].270. 03-03-064, § 391-25-051, filed 1/14/03, effective 2/14/03.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-110 Supporting evidence -- Showing of interest confidential. (1) A petition filed by employees or an employee organization shall be accompanied by a showing of interest indicating that the petitioner has the support of thirty percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest shall be furnished under the same timeliness standards applicable to

the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters shall not be valid unless signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw any authorization submitted for purposes of this section.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.070](#) and [41.59.070](#). 01-14-009, § 391-25-110, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-110, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.070](#) and [41.59.070](#). 90-06-072, § 391-25-110, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-054 (Order 88-02), § 391-25-110, filed 5/31/88. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-140 Notice to employees -- Limitations on employer actions. (1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, to inform employees of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of the petition and notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

(4) Where a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition, and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

(5) When an order of dismissal issued under [WAC 391-25-390](#) (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.

(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under [WAC 391-25-670](#), unless governed by (b) of this subsection.

(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining, any party to the proceeding may petition the commission to stay either of those obligations where the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control, or where the failure to resume bargaining would substantially harm the petitioned-for employees and leave them without an adequate administrative remedy. A petition filed under this subsection shall be accompanied by affidavits and evidence.

(c) Following the receipt of a petition under (b) of this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.

(d) The executive director shall forward all petitions and affidavits to the commission, who shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.

(e) If the commission uses its authority under (b) of this subsection, any party seeking review of the commission's decision shall seek relief through the courts.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.050](#). 01-14-009, § 391-25-140, filed 6/22/01, effective 8/1/01; 96-07-105, § 391-25-140, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#) and [41.56.050](#). 90-06-072, § 391-25-140, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

AMENDATORY SECTION(Amending WSR 03-11-029, filed 5/15/03, effective 6/15/03)

WAC 391-25-210 Bargaining unit configurations. (1) In proceedings on a petition for "decertification" under [WAC 391-25-070](#) (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;

(2) An organization which files a motion for intervention under [WAC 391-25-190](#) shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.

(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under [WAC 391-25-430](#) or after the commencement of a cross-check in another proceeding under [WAC 391-25-410](#) shall be dismissed as untimely.

(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under [WAC 391-25-420](#).

(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.06.340](#), [41.76.060](#), [41.56.070](#), [41.59.070](#), and [41.80.080](#). 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.070](#) and [41.59.070](#). 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-350 Hearings -- Reopening of hearing -- Briefs. (1) Hearings shall be public, except where a protective order is issued under [WAC 10-08-200](#)(7), and shall be limited to matters concerning the determination of a question concerning representation.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under [WAC 10-08-200](#) (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties to the proceeding as required by [WAC 391-08-120](#) (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.030](#), [34.05.437](#), [41.56.060](#), [41.56.070](#), [41.59.070](#) and [41.59.080](#). 01-14-009, § 391-25-350, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-350, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.060](#), [41.56.070](#), [41.59.070](#), [41.59.080](#) and [53.18.015](#). 90-06-072, § 391-25-350, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-370 Blocking charges -- Suspension of proceedings -- Request to proceed. (1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings, where:

(a) A complaint charging unfair labor practices is filed under the provisions of [chapter 391-45 WAC](#); and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve, as required by [WAC 391-08-120](#), a written request to proceed with the executive director. The request to proceed shall specify the case number of the representation proceeding, shall request that the representation petition be processed notwithstanding the pending unfair labor practice case, and shall waive the right to file objections under [WAC 391-25-590](#) (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed under this subsection, the executive director (~~((shall))~~) may resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

~~((3) Where a complaint charging unfair labor practices is filed after the issuance of a notice of election, the executive director shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in [WAC 391-25-590](#).)~~

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#). 01-14-009, § 391-25-370, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-25-370, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.070](#) and [41.59.070](#). 90-06-072, § 391-25-370, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-390 Proceedings before the executive director. (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate.

(a) The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under [WAC 391-25-590](#) after the election. (~~((An exception is made for rulings on whether the~~

employer or employees are subject to the jurisdiction of the commission, which may be appealed under [WAC 391-25-660](#).)

(4)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director or his or her designee has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing officer has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(5) Unless appealed to the commission under [WAC 391-25-660](#), a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.060](#), [41.56.070](#), [41.56.080](#), [41.59.070](#), [41.59.080](#) and [41.59.090](#). 01-14-009, § 391-25-390, filed 6/22/01, effective 8/1/01. Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.060](#), [41.56.070](#), [41.59.070](#) and [41.59.080](#). 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-390, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.58.050](#), [41.56.090](#) and [41.59.110](#). 88-12-054 (Order 88-02), § 391-25-390, filed 5/31/88. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-25-390, filed 9/16/85. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-396 Special provision -- State civil service employees. (~~WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to state civil service employees.~~) (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided:

The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a cross-check election under this rule;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-396, filed 1/14/03, effective 2/14/03.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-430 Notice of election. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, including that the eligible employees are limited to those who continue to be employed within the bargaining unit (~~((on the day of the tally))~~) when they cast a ballot in an on-site election or at the deadline for return of mail ballots.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least seven days, and shall remain posted until a tally of ballots has been issued. The day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [28B.52.030](#), [41.56.060](#), [41.56.070](#) and [41.59.070](#). 01-14-009, § 391-25-430, filed 6/22/01, effective 8/1/01; 96-07-105, § 391-25-430, filed 3/20/96, effective 4/20/96. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.060](#), [41.56.070](#) and [41.59.070](#). 90-06-072, § 391-25-430, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-436 Special provision -- State civil service employees. (1) While a notice of election is posted under [WAC 391-25-430](#), employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as they do not disrupt operations. However, if employees are permitted to discuss nonwork subjects or solicit other

employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(2) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(3) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

NEW SECTION

WAC 391-25-440 Election for inclusion of unrepresented employees. (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under [WAC 391-25-070](#) that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted under [WAC 391-25-140](#) shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for

employees into an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Cross-check procedures under [WAC 391-25-391](#) and 391-25-396 are applicable to this section.

(c) In such an election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

(5)(a) Should another organization seek to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has support from at least thirty percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents under this chapter and the appropriate statute, the resulting unit would be an appropriate unit.

(b) If either (a)(i) or (ii) of this subsection are not established, the request for intervention will be denied, and the petition processed in accordance with this section.

(c) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to [WAC 391-25-010](#) or 391-25-012, along with the requisite thirty percent showing of interest, and the petitioned-for unit is appropriate under the applicable statute, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to [WAC 391-25-010](#) or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.

AMENDATORY SECTION(Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-530 Votes needed to determine election. (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

(2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. 90-06-072, § 391-25-530, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-650 Briefs and written arguments on objections. (1) The due date for any appeal brief which the party filing an objection desires to have considered by the commission shall be fourteen days following the later of:

- (a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or
- (b) The filing of objections under WAC 391-25-590 (1)(b).

Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(2) The due date for any responsive brief which other parties desire to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the objections; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [41.56.070](#) and [41.59.070](#). 01-14-009, § 391-25-650, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-650, filed 7/1/98, effective 8/1/98. Statutory Authority: [RCW 41.58.050](#), [28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.56.060](#), [41.56.070](#) and [41.59.070](#). 90-06-072, § 391-25-650, filed 3/7/90, effective 4/7/90. Statutory Authority: [RCW 34.04.022](#), [41.58.050](#), [41.56.090](#), [41.59.110](#) and [28B.52.080](#). 85-19-059 (Resolution No. 85-01), § 391-25-650, filed 9/16/85. Statutory Authority: [RCW 28B.52.080](#), [41.56.040](#), [41.58.050](#), [41.59.110](#) and [47.64.040](#). 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION(Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-660 Appeals from orders and jurisdictional rulings. An order issued under [WAC 391-25-390](#) or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by [WAC 391-08-120](#)(1), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the

commission's Olympia office as required by [WAC 391-08-120\(1\)](#), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by [WAC 391-08-120\(1\)](#), and copies shall be served on all other parties as required by [WAC 391-08-120](#) (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with [WAC 391-08-180](#). Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: [RCW 28B.52.080](#), [41.56.090](#), [41.59.110](#), [41.58.050](#), [34.05.464](#), [41.56.070](#) and [41.59.070](#). 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-25-076 Special provision -- State civil service employees.